

**ANWAR “ANO” S. MARABUR, PETITIONER, VS.
COMMISSION ON ELECTIONS AND OMAR “BORNOK”
MAHAMAD, JR., RESPONDENTS.**

G.R. No. 169513. February 26, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for certiorari[1] assails the Resolution dated 21 February 2005[2] of the Commission on Elections (COMELEC) Second Division[3] and the Resolution dated 6 September 2005[4] of the COMELEC En Banc[5] in SPC No. 04-204. The COMELEC annulled the proclamation of Anwar "Ano" S. Marabur (petitioner) as the 10[th] ranking and winning candidate for councilor of Marawi City, Lanao del Sur, and denied petitioner's motion for reconsideration.

The Facts

Petitioner and Omar "Bornok" Mahamad,[6] Jr. (respondent) were among the candidates for councilors of Marawi City, Lanao del Sur in the 10 May 2004 elections.

On 12 May 2004, the Marawi City Board of Canvassers (CBC) convened at the Library of the People's Park, Camp Amai, Pak-pak, Marawi City to canvass the election returns from more than 190 precincts in Marawi City.

On 16 May 2004, one of the mayoralty candidates objected to the inclusion of the election return from Precinct No. 108-A of Barangay Lomidong.

On 18 May 2004, the CBC ruled to include the election return from Precinct No. 108-A.

On 20 May 2004, the CBC proceeded to tally and tabulate all the election returns. When the CBC was about to tally and tabulate the election return from Precinct No. 108-A, respondent's counsel, Atty. Federico Miranda, verbally objected to the tabulation on the ground that the election return was tampered and altered. Thereafter, the CBC suspended its proceedings to accommodate the objection.

On 21 May 2004, the CBC resumed its proceedings. Respondent's other counsel, Atty. Bayan Balt, reiterated their objection to the tabulation of the results of the election return from Precinct No. 108-A. Respondent then submitted his Formal Offer of Evidence to the CBC. Among respondent's evidence was the joint affidavit of the members of the Board of Election Inspectors in Precinct No. 108-A, which stated:

- That after the counting of votes which was held at People's Park, Marawi City, we prepared the election returns based on the votes obtained by candidates for National and Local position.
- That to the best of our own personal knowledge, candidates for Councilors Omar "Bornok" Mohamad, Jr. and Anwar "Ano" S. Marabur obtained the following votes corresponding to their names as follows:

Omar "Bornok" Mohamad, Jr. - Forty-Eight votes (48 votes)

Anwar "Ano" S. Marabur - Fifty votes (50 votes)

- That it is not true that Anwar "Ano" S. Marabur received One Hundred Fifty votes (150 votes).

- That we executed this Affidavit to attest to the veracity of the foregoing statements and to inform the Honorable Members of the City Board of Canvassers of Marawi City that Candidate for Councilor Anwar "Ano" S. Marabur did not received [sic] or obtained [sic] One Hundred Fifty votes (150 votes).[7]

Respondent also submitted an affidavit of one of his watchers claiming that respondent obtained 48 votes[8] while petitioner received 50 votes. The Certificate of Votes of Candidates,[9] which was signed and thumb marked by the Board of Election Inspectors, likewise showed that petitioner obtained only 50 votes in Precinct No. 108-A.

Respondent also argued that it was impossible for petitioner to obtain 150 votes from Precinct No. 108-A because based on the contested election return only 132 voters actually voted in Precinct No. 108-A.

With the respondent's objections and offer of evidence, the CBC initially deferred its canvass with the announcement that it could only proclaim the nine candidates for councilor who obtained the highest votes.

However, on 22 May 2004, despite the continuous objections from respondent's counsel and his manifestation of intent to appeal, the CBC still included in its canvass the contested election return. The CBC proclaimed all the winning candidates, including petitioner as the 10[th] ranking councilor of Marawi City. The CBC then issued its ruling, declaring that respondent did not comply with the mandatory requirement of simultaneous submission of the verbal and written objections and that respondent submitted his offer of evidence beyond the prescribed period. The CBC also ruled that there was no convincing proof of any superimposition done on the contested election return.

On 25 May 2004, respondent filed a petition with the COMELEC, praying that the proceedings of the CBC be declared illegal and void. The petition alleged that on 20 May 2004, the canvass of all but one of the 190 precincts of Marawi City, particularly Precinct No. 108-A, showed respondent to be ahead of petitioner, with 10,070 votes as against 10,020 votes for petitioner.[10] However, the election return from Precinct No. 108-A was allegedly missing, prompting the CBC to defer the canvass.[11] However, at around 8:00 p.m. of 20 May 2004, the missing election return allegedly reappeared. The election return showed signs of tampering atop the thumb marks and signatures of the members of the Board of Election Inspectors, and affixed at the end of the taras corresponding to petitioner's name were additional taras.[12] Alterations in the number of votes for petitioner in words and figures allegedly made it appear that petitioner had 150 votes instead of only 50 votes.[13] The petition also alleged that the CBC disregarded respondent's objections and denied him of any chance to appeal its inclusion of the contested election return.

Meanwhile, petitioner took his Oath of Office as councilor of Marawi City on 4 June 2004.

The Ruling of the COMELEC

In its Resolution of 21 February 2005, the COMELEC Second Division found that the CBC violated the prohibition in Section 20 of Republic Act No. 7166 (RA 7166)[14] on proclaiming any candidate as winner without authorization from the COMELEC after the COMELEC has ruled on the objections of the losing party. This prohibition is also found in the COMELEC rules. Since there was no such prior authorization from the COMELEC, the proclamation of petitioner as the 10[th] ranking councilor of Marawi City is void.

The COMELEC also found that the contested election return, "by sheer visual inspection," was clearly tampered. The 150 votes for petitioner were superimposed over the actual votes that he obtained - which were 50 votes.

Excluding the contested election return, the total number of votes from all the precincts in Marawi City including the true votes in Precinct No. 108-A, would be:

Respondent - 10, 118 votes

Petitioner - 10, 070 votes

Therefore, the winning candidate as the 10[th] councilor of Marawi City was respondent, instead of petitioner.

The dispositive portion of the resolution reads:

WHEREFORE, under the foregoing premises, the instant Petition is hereby GRANTED. Consequently, the proclamation of private respondent Anwar "Ano" S. Marabur as the tenth (10[th]) ranking and winning candidate for city councilor of Marawi City, Lanao del Sur is hereby ANNUL[L]ED.

Upon finality of this Resolution, the City Board of Canvassers of Marawi City is hereby directed to re-convene and re-canvass the election return from Precinct No. 108-A of Barangay Lomidong, Marawi City and consistent with Our pronouncement herein. Thereafter, the said City Board of Canvassers is hereby directed to proclaim the tenth ranking and lawfully elected councilor for Marawi City.

SO ORDERED.[15] (Emphasis in the original)

On 1 March 2005, petitioner moved for reconsideration of the resolution of the COMELEC Second Division. Thereafter, or on 20 May 2005, petitioner filed a motion to expunge the petition filed by respondent on the ground that respondent was not a legitimate registered voter of Barangay Marinaut East.

On 6 September 2005, the COMELEC En Banc denied petitioner's motion for reconsideration as well as the motion to expunge the petition. The COMELEC disposed of the motions, as follows:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION as well as the VERY URGENT MOTION TO DISMISS (WITH LEAVE) AND/OR EXPUNGE FROM THE RECORDS THE ABOVE-ENTITLED PETITION' filed by private respondent ANSWAR [sic] "ANO" S. MARABUR are hereby DENIED. The Resolution of this Commission (Second Division) promulgated last February 21, 2005 is AFFIRMED en toto.

SO ORDERED.[16] (Emphasis in the original)

Hence, this petition.

The Issue

The lone issue for resolution is whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in annulling the proclamation of petitioner as the 10[th] ranking and winning candidate for councilor of Marawi City.

The Ruling of the Court

The petition lacks merit.

In resolving the issue, we shall examine whether the procedure outlined in Section 20 of RA 7166[17] governing the disposition of contested election returns was observed in this case.

Section 20 of RA 7166 reads as follows:

Section 20. Procedure in Disposition of Contested Election Returns. -

(a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the

canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall proceed to canvass the returns which are not contested by any party.

(c) Simultaneous with the oral objection, the objecting party shall also enter his objection in the form for written objections to be prescribed by the Commission. Within twenty-four (24) hours from and after the presentation of such an objection, the objecting party shall submit the evidence in support of the objection, which shall be attached to the form for written objections. Within the same period of twenty-four (24) hours after presentation of the objection, any party may file a written and verified opposition to the objection in the form also to be prescribed by the Commission, attaching thereto supporting evidence, if any. The board shall not entertain any objection or opposition unless reduced to writing in the prescribed forms.

The evidence attached to the objection or opposition, submitted by the parties, shall be immediately and formally admitted into the records of the board by the chairman affixing his signature at the back of each every page thereof.

(d) Upon receipt of the evidence, the board shall take up the contested returns, consider the written objections thereto and opposition, if any, and summarily and immediately rule thereon. The board shall enter its ruling on the prescribed form and authenticate the same by the signatures of its members.

(e) Any party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling. The board shall enter said information in the minutes of the canvass, set aside the returns and proceed to consider the other returns.

(f) After all the uncontested returns have been canvassed and the contested return ruled upon by it, the board shall suspend the canvass. Within forty-eight (48) hours, therefrom, any party adversely affected by the ruling may file with the board a written and verified notice of appeal; and within an unextendible period of five (5) days thereafter an appeal may be taken to the Commission.

(g) Immediately upon receipt of the notice of appeal, the board shall make an appropriate report to the Commission, elevating therewith the complete records and evidence submitted in the canvass, and furnishing the parties with copies of the report.

(h) On the basis of the records and evidence elevated to it by the board, the Commission shall decide summarily the appeal within seven (7) days from receipt of said records and evidence. Any appeal brought before the Commission on the ruling of the board, without the accomplished forms and the evidence appended thereto, shall be summarily dismissed.

The decision of the Commission shall be executory after the lapse of seven (7) days from receipt thereof by the losing party.

(i) The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objection brought to it on appeal by the losing party. Any proclamation made in violation hereof shall be void ab initio, unless the contested returns will not adversely affect the results of the election. (Emphasis supplied)

Respondent presented his oral objections in accordance with paragraph (a). Petitioner's own admission that respondent's counsel, Atty. Federico Miranda, verbally objected to the tabulation when the CBC was about to tally and tabulate the election return from Precinct No. 108-A[18] negates petitioner's claim that respondent belatedly aired his objections. Respondent presented his objections within the time allowed by law, which is when the

election return is still being examined by the CBC.[19] Therefore, respondent did not violate the rule that protestants should present objections to the inclusion or exclusion of election returns at the time the questioned returns are presented for inclusion in the canvass.[20]

Pursuant to paragraph (b), the CBC deferred the canvass of the election returns with the announcement that it could only proclaim the nine candidates for councilor with the highest number of votes.

However, respondent failed to comply with the requirement in paragraph (c), pertaining to the submission of his written objections in the form prescribed by the COMELEC. Respondent explains that it was "due to the fact that [he] was completely deprived of the opportunity to file a simultaneous written objection because of the commotion that ensued immediately after [he] has entered his oral objection." [21] Significantly, petitioner acknowledged that a commotion occurred after respondent's counsel objected to the inclusion of the contested election return.[22]

While respondent failed to submit his written objections, the Court finds that respondent's submission of his offer of evidence, including the evidence, within the prescribed period[23] constituted substantial compliance with the requirement that objections be reduced into writing.

Indeed, reducing the objections into writing and submitting them with the supporting evidence are crucial to the delivery of speedy and equitable relief in pre-proclamation controversies.[24] Unless this requirement is strictly observed, the COMELEC can not determine the prima facie merit of the appeal, and the controversy will be unduly prolonged.[25] After reviewing respondent's evidence, we find that even without respondent's written objections, the CBC and the COMELEC could rule, as they did, on respondent's objections. Thus, the purpose for requiring the written objections, which is to expedite the resolution of pre-proclamation controversies, was achieved. There was no showing that the absence of the written objections unduly delayed the resolution of respondent's protest. Likewise, there was no indication that the COMELEC was unable to decide respondent's appeal for lack of his written objections.

To rule that the absence of respondent's written objections, despite the glaring irregularity of the election return from Precinct No. 108-A, is a ground to uphold petitioner's proclamation amounts to an absolute frustration of the electorate's will. Technicalities and procedural barriers should not be allowed to stand if they constitute an obstacle to the determination of the electorate's true will in the choice of their elective officials.[26] Petitioner himself understands the purpose of the rules on canvassing. The "rules relative to canvassing have for their object the determination of the true results of the elections based on the official election returns. In order that the result of the canvass would reflect the true expression of the people's will in the choice of their elective officials, the canvass must be based on true, genuine, and authentic election returns." [27]

At any rate, pursuant to paragraph (d), the CBC entertained and ruled on respondent's objections despite his failure to reduce such objections into writing. The CBC, in its Ruling of 22 May 2004, opined that "there was no most convincing proof" that superimposition was done on the contested election return.[28]

However, the CBC contravened paragraphs (e), (f), (g), and (i). First, the CBC ignored respondent's manifestation to appeal. Under paragraph (e), the CBC should have entered respondent's intent to appeal in the minutes of the canvass, set aside the contested election return, and proceeded to consider the other returns. There is no showing that the CBC observed this procedure. Second, the CBC did not suspend the canvass, and instead proclaimed petitioner as one of the winning candidates for councilor. The CBC, in violation of paragraph (f), did not give respondent 48 hours to file his notice of appeal forcing respondent to appeal directly to the COMELEC. Consequently, the CBC did not elevate any record or evidence to the COMELEC as required in paragraph (g). Finally, disregarding paragraph (i), the CBC proclaimed petitioner without any COMELEC authorization after the

COMELEC has ruled on respondent's objections.

Paragraph (i) of Section 20, RA 7166 provides that any proclamation made in violation of the prohibition against proclamation without the COMELEC authorization shall be void ab initio. Accordingly, petitioner's proclamation as the 10[th] ranking and winning candidate for councilor is void.[29] Where a proclamation is void, the proclamation is no proclamation at all and the assumption of office of the proclaimed candidate cannot deprive the COMELEC of the power to declare such nullity and to annul the proclamation.[30] The nullity of the proclamation is one of the exceptions[31] to the rule that after a proclamation has been made, a pre-proclamation case before the COMELEC is no longer viable.[32] This resolves petitioner's argument that respondent's cause of action is proper in an election contest, and not in a pre-proclamation controversy.

In view of the CBC's violation of paragraph (i), among others, we find that the COMELEC properly annulled petitioner's proclamation and committed no grave abuse of discretion amounting to lack or excess of jurisdiction. For this Court to issue the extraordinary writ of certiorari, the tribunal or administrative body, in this case the COMELEC, must have issued the assailed decision, order, or resolution in a capricious and despotic manner.[33] Clearly, such is not the situation in the instant case.

Petitioner's contention that the contested election return contained no sign of any tampering or alteration, and thus, prima facie regular on its face, is untenable. The finding of the COMELEC that by simple inspection the contested election return is clearly tampered binds this Court,[34] absent any showing that this particular finding is unsubstantiated. As attested to by the members of the Board of Election Inspectors in Precinct No. 108-A, petitioner did not receive 150 votes. Since the election return does not, on its face, appear regular, the rule that the CBC and the COMELEC are not to look beyond or behind the election return is not applicable to this case.[35]

In addition, the suspicious disappearance and sudden reappearance of the contested election return should have put the CBC on guard of possible tampering or alteration of the election return from Precinct No. 108-A. Yet, the CBC included in its canvass the election return and continued to proclaim petitioner in defiance of the express prohibition under paragraph (i) of Section 20 of RA 7166.

On petitioner's claim that respondent is not a registered voter of Barangay Marinaut East, we agree with the COMELEC's ruling that "issues relating to the qualifications of candidates are not proper in pre-proclamation controversies such as the instant case." As defined by the Omnibus Election Code,[36] a pre-proclamation controversy refers to any question affecting the proceedings of the board of canvassers, or any matter raised under Sections 233, 234, 235, and 236 in relation to the preparation, transmission, receipt, custody, and appreciation of the election returns.

WHEREFORE, we DISMISS the petition and AFFIRM the Resolution dated 21 February 2005 of the Commission on Elections Second Division and the Resolution dated 6 September 2005 of the Commission on Elections En Banc in SPC No. 04-204.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Corona, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.

Carpio-Morales, Callejo, Sr., JJ., on leave.

Azcuna, J., on official leave.

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] Rollo, pp. 46-59.

[3] Composed of Presiding Commissioner Mehol K. Sadain, Commissioners Florentino A. Tuason, Jr., and Manuel A. Barcelona, Jr.

[4] Rollo, pp. 62-65.

[5] Composed of Chairman Benjamin S. Abalos, Sr., Commissioners Rufino S.B. Javier, Resurreccion Z. Borra, Mehol K. Sadain, and Florentino A. Tuason, Jr.

[6] Sometimes spelled in the records as "Mohamad" and "Mohammad."

[7] Rollo, p. 82. The affiants, namely, Dimangadap Cacasi, Jubaira Macapodi, and Johary Diacatra are public school teachers who served as Chairman and Members, respectively, of the Board of Election Inspectors assigned to Precinct No. 108-A, Barangay Lomidong, Marawi City.

[8] Id. at 83. However, the amount in words is incorrectly stated as fifty votes.

[9] Id. at 84-85.

[10] Id. at 47.

[11] Id.

[12] Id.

[13] Id.

[14] An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes. Approved on 16 November 1991.

[15] Rollo, pp. 58-59.

[16] Id. at 64.

[17] This provision is substantially reiterated in Section 9, Rule 27 of the COMELEC Rules of Procedure and in Section 36 of COMELEC Resolution No. 6669 or the General Instructions for Municipal/City/Provincial and District Boards of Canvassers in Connection with the May 10, 2004 Elections.

[18] Rollo, p. 23.

[19] *Guiao v. Commission on Elections*, No. L-68056, 5 July 1985, 137 SCRA 356.

[20] See *Danilo "Dan" Fernandez v. Commission on Elections and Teresita Lazaro*, G.R. No. 171821, 9 October 2006, citing *Siquian, Jr. v. COMELEC*, 378 Phil. 182 (1999).

[21] Rollo, p. 118.

[22] Id., citing petitioner's Answer with Affirmative Defense and Counterclaim filed with the COMELEC.

[23] Within 24 hours from and after the presentation of respondent's oral objections on 20 May 2004.

[24] *Cordero v. Comelec*, 369 Phil. 368 (1999).

[25] Id.

[26] *Duremdes v. Commission on Elections*, G.R. Nos. 86362-63, 27 October 1989, 178 SCRA 746. See also *Alejandro v. Commission on Elections*, G.R. No. 167101, 31 January 2006, 481 SCRA 427.

[27] Rollo, p. 26.

[28] Id. at 67.

[29] *Duremdes v. Commission on Elections*, supra note 26.

[30] Id.

[31] These are where: (a) the board of canvassers was improperly constituted; (b) quo warranto was not the proper remedy; (c) what was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation; (d) the filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and (e) the proclamation was null and void (*Laodenio v. COMELEC*, 342 Phil. 676 [1997]).

[32] See *Gallardo v. Rimando*, G.R. No. 91798, 13 July 1990, 187 SCRA 463; *Casimiro v. Commission on Elections*, G.R. Nos. 84462-63, 29 March 1989, 171 SCRA 468; *Salvacion v. Commission on Elections*, G.R. Nos. 84673-74, 21 February 1989, 170 SCRA 513.

[33] *Malinias v. COMELEC*, 439 Phil. 319 (2002).

[34] See *Padilla v. Commission on Elections*, Nos. 68351-52, 9 July 1985, 137 SCRA 424.

[35] See *Chu v. COMELEC*, 377 Phil. 509 (1999).

[36] *Batas Pambansa Blg. 881*.

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